

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JAKE L. AGUINAGA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 220,463
<b>RUBBERMAID SPECIALTY PRODUCTS</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Both claimant and respondent appealed from the September 16, 1997, Award by Administrative Law Judge Jon L. Frobish.

**APPEARANCES**

Claimant appeared by and through his attorney, Steven R. Wilson of Wichita, Kansas. Respondent appeared by and through its attorney, Terry J. Torline of Wichita, Kansas. There were no other appearances.

**RECORD**

The record considered by the Appeals Board is the same as that enumerated in the Award of the Administrative Law Judge.

**STIPULATIONS**

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

**ISSUES**

The Administrative Law Judge found claimant entitled to a 25 percent permanent partial disability compensation award for a scheduled disability to the forearm based on the impairment rating by Dr. Harry A. Morris. Without elaboration the Administrative Law Judge

found the 44 percent left-upper extremity rating by Dr. Pedro A. Murati to be improper and, therefore, it was not to be considered. The claimant appeals that finding of the Administrative Law Judge and requests the Appeals Board weigh both ratings equally and find claimant entitled to a 34.5 percent permanent partial disability to the arm. Respondent agrees with the Administrative Law Judge's finding as to the nature and extent of claimant's disability but contends the Administrative Law Judge erred in computing the award by omitting the temporary total disability compensation paid by respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record, the Appeals Board finds that the findings and conclusions of the Administrative Law Judge regarding the nature and extent of claimant's disability are accurate and should be affirmed. However, the award should be corrected to account for the 84.26 weeks of temporary total disability compensation paid in the total amount of \$21,368.24.

The Appeals Board agrees that claimant's injuries resulted in a 25 percent impairment of function. The testimony of Dr. Morris who is a board-certified orthopedic surgeon, is competent and persuasive. The fact that the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) specifically address the injuries in question precludes a finding of a functional impairment based upon the 44 percent rating by Pedro A. Murati, M.D. K.S.A. 44-510d(a)(23) states:

Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the third edition, revised, of the American Medical Association Guidelines for the Evaluation of Physical Impairment [sic], if the impairment is contained therein. (Emphasis added.)

Dr. Murati admitted that a part of his assessment of claimant's functional impairment was not based upon the AMA Guides. The portion of Dr. Murati's 44 percent impairment rating not contained in the AMA Guides, was given because of the surgical treatment procedures claimant underwent and not for the loss of use of the scheduled member as the statute requires. Also, Dr. Murati used the Fourth Edition instead of the Third Edition, (Revised) of the AMA Guides for a January 25, 1996, accident.

K.S.A. 44-510d(a) provides a schedule for certain injuries. For purposes of that schedule the parts of the upper extremity are defined as consisting of the hand, forearm, arm, and shoulder. However, ratings under the AMA Guides are only given for the hand and then to the entire upper extremity. Accordingly, both Dr. Morris and Dr. Murati provided ratings to claimant's upper extremity even though the injury was to the level of the wrist and did not extend to the elbow joint. See K.A.R. 51-7-8(d)(4). Therefore, for purposes of this award, their ratings will be treated as rating to the forearm.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated September 16, 1997, should be, and is hereby, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Jake L. Aguinaga, and against the respondent, Rubbermaid Specialty Products, a qualified self-insured, for an accidental injury which occurred January 25, 1996, and based upon an average weekly wage of \$431.51 for 84.26 weeks of temporary total disability compensation at the rate of \$287.69 per week or \$24,240.76, followed by 28.94 weeks of permanent partial disability compensation at the rate of \$287.69 per week or \$8,325.75, for a 25% permanent partial disability to the forearm, making a total award of \$32,566.51.

As of January 16, 1998, there is due and owing claimant 84.26 weeks of temporary total disability compensation at the rate of \$287.69 per week or \$24,240.76, followed by 18.74 weeks of permanent partial compensation at the rate of \$287.69 per week in the sum of \$5,391.31 for a total of \$29,632.07, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$2,934.44 is to be paid for 10.2 weeks at the rate of \$287.69 per week, until fully paid or further order of the Director.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1998.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS  
Terry J. Torline, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director